

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 Jaime R. Román, Deputy Attorney General
California Department of Justice
3 300 S. Spring St., 10th Floor-North
Los Angeles CA 90013
4 Telephone: (213) 897-2581
5 Attorneys for Complainant

6
7 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
8 BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA

10 In the Matter of the Accusation)	NO. D-4921
Against:)	
11)	OAH No. L-59075
12 DAVID PATRICK DEVLIN, D.P.M.)	
711 N. Alvarado, Suite 107)	STIPULATED SETTLEMENT
13 Los Angeles, California 90026)	AND
Podiatric Physician)	DISCIPLINARY ORDER
14 Certificate No. E-358,)	
15 Respondent.)	

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to
18 the above-entitled proceedings that the following matters are
19 true:

20 PARTIES

21 1. The Complainant, James Rathlesberger, is the
22 Executive Officer of the Board of Podiatric Medicine of the State
23 of California (hereinafter referred to as "the Board"), and he
24 brings this action solely in his official capacity. The
25 Complainant is represented by Attorney General Daniel E. Lungren,
26 by and through Deputy Attorney General Jaime René Román, and the
27 Respondent, David Patrick Devlin, D.P.M., is represented by
Theodore A. Cohen, Esq.

1 2. On or about July 11, 1989, the Board issued License
2 No. E-358 to Respondent David Patrick Devlin, D.P.M. At all
3 times herein mentioned said license has been in full force and
4 effect.

5 JURISDICTION

6 3. Respondent David Patrick Devlin, D.P.M. understands
7 that Accusation No. D-4921 (a copy of which is attached hereto as
8 Exhibit "A" and incorporated herein by reference as though fully
9 set forth) has been filed and served against him, and Amended &
10 Supplemental Accusation No. D-4921 (a copy of which is attached
11 hereto as Exhibit "B" and incorporated herein by reference as
12 though fully set forth herein) together charging him with
13 violations of sections 490, 2052, 2234, 2236, 2237, 2238, 2239,
14 2242, 2261 and 2472 of the California Business & Professions
15 Code.

16 4. Respondent David Patrick Devlin, D.P.M. understands
17 that, but for this Stipulation, he would be entitled to a hearing
18 on the charges in the Accusation and the Amended & Supplemental
19 Accusation herein filed, to confront and cross-examine witnesses
20 against him, to present his own evidence, to a written Decision
21 following the hearing, to Petition for Reconsideration of any
22 unsatisfactory Decision, to appeal any adverse Decision to the
23 courts, and to any and all other rights pursuant to the
24 Administrative Procedures Act and the California Code of Civil
25 Procedure.

26 5. Respondent David Patrick Devlin, D.P.M. understands
27 that should the Board of Podiatric Medicine, for any reason, fail

1 to approve this Stipulation, it shall be of no force or effect as
2 to either party.

3 WAIVER

4 6. Respondent David Patrick Devlin, D.P.M. has been
5 provided sufficient time to fully discuss the Accusation and the
6 Amended & Supplemental Accusation and this Stipulation with
7 counsel of his own choosing, to wit, Theodore A. Cohen, Esq., and
8 has freely, voluntarily, knowingly and intelligently waived each
9 and every right set out in Paragraph 4 herein.

10 CULPABILITY

11 7. Respondent David Patrick Devlin, D.P.M. admits each
12 of the allegations contained in the Accusation and the Amended &
13 Supplemental Accusation attached hereto as Exhibits "A" and "B",
14 respectively, and incorporated herein by reference as though
15 fully set forth.

16 8. Respondent David Patrick Devlin, D.P.M. admits that
17 his Podiatric Physician Certificate is subject to discipline
18 pursuant to the sections of the California Business and
19 Professions Code provided in paragraph 3 herein.

20 ORDER

21 9. Based on the foregoing admissions, stipulations,
22 and recitals, it is agreed that Podiatric Physician Certificate
23 No. E-358 issued to Respondent David Patrick Devlin, D.P.M., be
24 revoked. However, the revocation is stayed and Respondent David
25 Patrick Devlin, D.P.M. is placed on probation for five years upon
26 the following terms and conditions:

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A. SUSPENSION

As part of probation, respondent is suspended from the practice of podiatric medicine for 30 days beginning the effective date of this Decision.

B. CONTROLLED DRUGS - PARTIAL RESTRICTION

Respondent shall not prescribe, administer, dispense, order or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for those drugs listed in Schedules III, IV, and V of the Act. However, respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedule II of the Act for inpatients in a hospital setting, and not otherwise.

C. DRUGS ABSTENTION

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by section 4211 of the Business & Professions Code, or any drugs requiring a prescription. Orders forbidding respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

D. MAINTAIN CONTROLLED DRUGS RECORD

Respondent shall maintain a record of all controlled substances or drugs prescribed, dispensed or administered by respondent during probation. The record shall show the following:

- (1) the name and address of the patient,
- (2) the date,
- (3) the character and quantity of controlled substances or drugs involved, and
- (4) the pathology and purpose for which the controlled substance was furnished.

Respondent shall keep this record in a separate file or ledger in chronological order, and shall make it available for inspection and copying by the Board or its designee, upon request.

E. BIOLOGICAL FLUID TESTING

Respondent shall immediately submit to biological fluid testing, at his expense, upon the request of the Board or its designee.

F. REHABILITATION PROGRAM

Within 30 days of the effective date of this Decision, respondent shall enroll and participate in the Board's Diversion Program until the Board or its designee determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by

1 respondent.

2 **G. COMMUNITY SERVICE**

3 Within 60 days of the effective date of this
4 Decision, respondent shall submit to the Board for
5 its prior approval a community service program in
6 which he shall provide free medical services on a
7 regular basis to a community or charitable facility
8 or agency for at least twenty hours a month for the
9 first 24 months of probation. Neither respondent,
10 nor respondent's practice, nor any partner,
11 associate or employee of respondent shall benefit
12 financially from such a community service program.

13 **H. ETHICS**

14 Within 60 days of the effective date of this
15 Decision, respondent shall submit to the Board for
16 its prior approval a course in Ethics, which
17 respondent shall successfully complete during the
18 first year of probation.

19 **I. RECOVERY OF COSTS**

20 The respondent shall pay to the Board the amount of
21 \$6,000.00 on or before five years from the effective
22 date of this Decision for recovery of the actual and
23 reasonable costs of the investigation and
24 prosecution of this matter as provided for in
25 section 2497.5 of the Business & Professions Code.

26 **J. OBEY ALL LAWS**

27 Respondent shall obey all federal, state and local

1 laws, and all rules governing the practice of
2 podiatric medicine in California.

3 **K. QUARTERLY REPORTS**

4 Respondent shall submit quarterly declarations,
5 under penalty of perjury, on forms provided by the
6 Board, stating whether there has been compliance
7 with all the conditions of probation.

8 Notwithstanding any provision for tolling of
9 requirements of probation, during the cessation of
10 practice respondent shall continue to submit
11 quarterly declarations under penalty of perjury.

12 **L. SURVEILLANCE PROGRAM**

13 Respondent shall comply with the Board's probation
14 surveillance program.

15 **M. INTERVIEW WITH PODIATRIC MEDICAL CONSULTANT**

16 Respondent shall appear in person for interviews
17 with the Board's medical consultant, upon request,
18 at various intervals and with reasonable notice.

19 **N. TOLLING FOR CESSATION OF PRACTICE**

20 In the event the respondent fails to satisfactorily
21 complete any provision of the order of probation,
22 which results in the cessation of practice, all
23 other provisions of probation other than the
24 submission of quarterly reports shall be held in
25 abeyance until respondent is permitted to resume
26 the practice of podiatry. All provisions of
27 probation shall recommence on the effective date of

1 resumption of practice. Periods of cessation of
2 practice will not apply to the reduction of the
3 probationary period.

4 **O. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE**

5 In the event respondent should leave California to
6 reside or to practice outside the state, respondent
7 must notify the Board in writing of the dates of
8 departure and return. Periods of residency or
9 practice outside California will not apply to the
10 reduction of this probationary period.

11 **P. COMPLETION OF PROBATION**

12 Upon successful completion of probation,
13 respondent's certificate will be fully restored.

14 **Q. VIOLATION OF PROBATION**

15 If respondent violates probation in any respect,
16 the Board, after giving respondent notice and the
17 opportunity to be heard, may revoke probation and
18 carry out the disciplinary order that was stayed.

19 If an Accusation or Petition to Revoke Probation is
20 filed against respondent during probation, the
21 Board shall have continuing jurisdiction until the
22 matter is final, the period of probation shall be
23 extended until the matter is final and no Petition
24 for Modification of Penalty shall be considered
25 while there is an Accusation or Petition to Revoke
26 Probation pending against respondent.

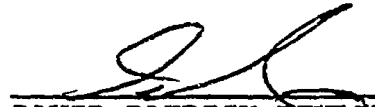
1 R. COMPLIANCE WITH CONTINUING MEDICAL EDUCATION

2 Respondent shall submit satisfactory proof
3 biennially to the Board of compliance with the
4 requirement to complete fifty hours of approved
5 continuing medical education for re-licensure
6 during each two (2) year renewal period.

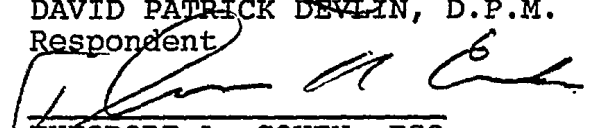
7 ACKNOWLEDGEMENT

8 I have read the foregoing Stipulation and Waiver and
9 have taken the opportunity to consult with counsel of my own
10 choosing, to wit, Theodore A. Cohen, Esq. I understand that by
11 signing this Stipulation and Waiver, I am admitting culpability,
12 and agreeing to the aforementioned discipline. I enter into this
13 Stipulation and Waiver freely, intelligently, knowingly and
14 voluntarily.

15 DATED: 4/18, 1993


DAVID PATRICK DEVLIN, D.P.M.
Respondent

16
17 DATED: 4/26, 1993

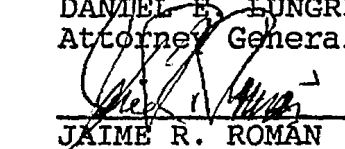

THEODORE A. COHEN, ESQ.
Attorney for Respondent

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20 ENDORSEMENT

21 The foregoing Stipulation and Waiver is hereby
22 respectfully submitted for the consideration of the Board of
23 Podiatric Medicine.

24 DANIEL E. LUNGREN
Attorney General

25 DATED: April 30, 1993


JAIME R. ROMAN
Deputy Attorney General
Attorneys for Complainant
Board of Podiatric Medicine
Complainant

1 DECISION AND ORDER
2 OF THE
3 BOARD OF PODIATRIC MEDICINE

4 The foregoing Stipulation and Order, in Case Number
5 D-4921, is hereby adopted as the Order of the California Board of
6 Podiatric Medicine. An effective date of September 22, 1993,
7 has been assigned to this Decision and Order.

8 Made this 23rd day of August, 1993.

9 BOARD OF PODIATRIC MEDICINE

10
11 By 

12 STEVEN J. DE VALENTINE, D.P.M.
13 President
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8 BEFORE THE
MEDICAL BOARD OF CALIFORNIA
BOARD OF PODIATRIC MEDICINE
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	Case No. <u>D-4921</u>
12 Against:)	
13 DAVID PATRICK DEVLIN, D.P.M.)	ACCUSATION
14 711 N. Alvarado, Suite 107)	
15 Los Angeles CA 90057)	
16 Podiatric Physician)	
17 Certificate No. E358,)	
18 Respondent.)	

19 Complainant alleges that:

20 PARTIES

21 1. He is James Rathlesberger, Executive Officer of the
22 Board of Podiatric Medicine of the State of California
(hereinafter, the "Board") and makes and files this Accusation
solely in his official capacity.

23 2. On or about July 11, 1989, the Board issued License
24 No. E358 to David Patrick Devlin, D.P.M. (hereinafter, the
25 "respondent") to practice podiatric medicine in this state. Said
26 license is currently in full force and effect.
27

JURISDICTION

3. Pursuant to Business & Professions Code sections 2222 and 2497(a)^{1/}, the Board may suspend, revoke, or impose probation on any certificate to practice podiatric medicine on a licensee found guilty under the Medical Practice Act.

4. Section 2234 of the Code provides that the Board shall take action against any licensee charged with unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

5. Section 2472 of the Code provides that the certificate to practice podiatric medicine authorizes the holder to practice podiatric medicine and that "podiatric medicine" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle

1. Except as otherwise provided, all statutory references are to the Business and Professions Code.

1 and tendons that insert into the foot and the nonsurgical
2 treatment of the muscles and tendons of the leg governing the
3 functions of the foot.

4 6. Section 2472 of the Code further provides that no
5 podiatrist shall administer an anesthetic other than local.

6 7. Section 2052 of the Code provides that any person
7 who practices or attempts to practice, any system or mode of
8 treating the sick or afflicted in this state, or who diagnoses,
9 treats, operates for, or prescribes for any ailment, blemish,
10 deformity, disease, disfigurement, disorder, injury, or other
11 physical or mental condition of any person, without having at the
12 time of so doing a valid, unrevoked, or unsuspended certificate
13 as provided by the Medical Practice Act (sections 2000 et.seq.),
14 or without being authorized to perform such act pursuant to a
15 certificate obtained in accordance with some other provision of
16 law, is guilty of a misdemeanor.

17 8. Section 2238 of the Code provides that violation of
18 any federal or state statute or regulation regulating dangerous
19 drugs or controlled substances constitutes unprofessional
20 conduct.

21 9. Section 2239(a) of the Code provides that the use
22 or prescribing for or administering to himself or herself, of any
23 controlled substance; or the use of any of dangerous drugs, to
24 the extent, or in such manner as to be dangerous or injurious to
25 the licensee, or to any other person or to the public,
26 constitutes unprofessional conduct.

27 10. Section 2242(a) of the Code provides that it is

1 unprofessional conduct to prescribe, dispense or furnish a
2 dangerous drug without a good faith prior examination and medical
3 indication therefor.

4 11. Section 2261 of the Code provides that knowingly
5 making or signing any certificate or other document directly or
6 indirectly related to the practice of medicine or podiatry which
7 falsely represents the existence or nonexistence of a state of
8 facts, constitutes unprofessional conduct.

9 12. Health and Safety Code section 11152 provides that
10 no person shall write, issue, fill, compound or dispense a
11 prescription that does not conform to the Controlled Substances
12 Act (Health and Safety Code sections 11000 et.seq.).

13 13. Health and Safety Code section 11153 provides, in
14 pertinent part, that a prescription for a controlled substance
15 shall only be issued for a legitimate medical purpose by an
16 individual practitioner acting in the usual course of his or her
17 professional practice.

18 14. Health and Safety Code section 11173(b) provides
19 that no person shall make a false statement in any prescription,
20 order, report, or record required by Health and Safety Code
21 section 11000 et.seq..

22 15. Health and Safety Code section 11157 provides that
23 no person shall issue a prescription that is false or fictitious
24 in any respect.

25 16. Health and Safety Code section 11170 provides that
26 no person shall prescribe, administer, or furnish a controlled
27 substances for himself.

FIRST CAUSE OF ACTION

17. Respondent is subject to disciplinary action under the authority of sections 2234 and 2238 of the Code in that he engaged in unprofessional conduct by violating sections 11152 and 11153 of the Health & Safety Code regulating dangerous drugs or controlled substances by issuing a prescription for a controlled substance for other than a legitimate medical purpose. The facts and circumstances are as follows:

A. Between about January 1990 and about July 1991, respondent was employed by and associated with Dr. William Pagliano, D.P.M., at Dr. Pagliano's Los Angeles and Newhall offices.

B. On or about the following dates respondent issued the following prescriptions:

<u>Date</u>	<u>Name</u>	<u>Drug (and Strength/Amount)</u>
(the following were filled at Horton & Converse Pharmacy)		
4-27-90*	for office use	20 hydrocodone w/acetaminophen
7-26-90	for office use	15 Vicodin
8-6-90	for office use	12 Vicodin
8-29-90	for office use	10 Valium 10mg.
9-6-90	for office use	12 hydrocodone w/acetaminophen
9-27-90	for office use	20 hydrocodone w/acetaminophen
10-12-90	for office use	20 hydrocodone w/acetaminophen
10-22-90	respondent	15 hydrocodone w/acetaminophen
10-26-90	for office use	10 diazepam 10mg.
"	"	25 hydrocodone w/acetaminophen
"	"	25 Vicodin
10-30-90	C.D.	20 hydrocodone
11-26-90	for office use	25 Vicodin
"	"	10 Valium 10mg.
12-6-90	for office use	25 Synalgos-dc
1-2-91	C.D.	30 hydrocodone
1-14-91	C.D.	20 hydrocodone
"	C.D.	50 Valium 10mg.
(the following were filled at Medical Square Pharmacy)		
no date*	respondent	30 Vicodin
" *	respondent	15 Valium 10mg

1	" *	respondent	20 Vicodin
	" *	respondent	10 Valium 10mg
2	" *	respondent	30 Vicodin
	" *	respondent	20 Valium 10mg
3	" *	respondent	20 Lortab 5mg.
	"	respondent	20 Lortab 2.5mg
4	"	respondent	30 Lorcet Plus
	5-29-91*	respondent	40 Lorcet Plus
5	(the following were filled at Valencia Pharmacy)		
6	10-30-90	respondent	10 Vicodin
	1-29-91*	respondent	5 Valium 10mg
7	" *	respondent	10 Vicodin
	2-12-91	respondent	10 Soma cpd. w/codeine
8	6-25-91*	respondent	20 Lorcet Plus

9 All prescriptions marked "*" were issued in the name of Dr.
10 Pagliano

11
12 C. At all times pertinent herein, each of the drugs
13 set out hereinabove was a Schedule III narcotic
14 controlled substance pursuant to Health and Safety Code
15 section 11056 and 21 C.F.R. section 1308.13, except
16 Valium and diazepam, which were Schedule IV non-
17 narcotic controlled substances pursuant to Health and
18 Safety Code section 11057 and 21 C.F.R. section
19 1308.14.

20 D. Each of the above prescriptions, including all
21 those purportedly authorized by Dr. Pagliano, were
22 issued by respondent, and each such prescription,
23 including those issued in the name of C.D. and those
24 issued "for office use" was intended for respondent's
25 own use.

26 E. As to each of the above prescriptions, respondent
27 prescribed the controlled substance for himself.

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1 and circumstances are as follows:

2 A. Complainant incorporates by reference paragraphs 17
3 and 18 as though fully set forth herein.

4 B. Each of the above prescriptions purportedly
5 authorized by Dr. Pagliano was false and fraudulent in
6 that respondent, without Dr. Pagliano's authorization
7 or knowledge, issued the order.

8 C. The prescription for S.O. was false and fraudulent
9 in that respondent intended to take 12 Vicodin for his
10 own use and did so, repaying S.O. for half the cost of
11 the prescription.

12 FOURTH CAUSE OF ACTION

13 20. Respondent is subject to disciplinary action under
14 the authority of sections 2234 and 2238 of the Code in that he
15 engaged in unprofessional conduct by violating sections 11152 and
16 11170 of the Health & Safety Code regulating dangerous drugs or
17 controlled substances in that he prescribed, administered, or
18 furnished a controlled substance for himself.

19 A. Complainant incorporates by reference subparagraphs
20 17A, 17B, 17C, 17D and 17E as though fully set forth
21 herein.

22 FIFTH CAUSE OF ACTION

23 21. Respondent is subject to disciplinary action under
24 the authority of sections 2234(e) and 2261 of the Code in that he
25 engaged in unprofessional conduct by knowingly making or signing
26 any certificate or other document directly or indirectly related
27 to the practice of podiatry which falsely represents the

1 existence or nonexistence of a state of facts. The facts and
2 circumstances are as follows:

3 A. Complainant incorporates by reference subparagraphs
4 19A, 19B and 19C as though fully set forth herein.

5 SIXTH CAUSE OF ACTION

6 22. Respondent is subject to disciplinary action under
7 the authority of section 2234(e) of the Code in that he engaged
8 in unprofessional conduct by violating sections 11152 and 11157
9 of the Health & Safety Code regulating dangerous drugs or
10 controlled substances in that he issued a prescription that was
11 false or fictitious. The facts and circumstances are as follows:

12 A. Complainant incorporates by reference subparagraphs
13 19A, 19B and 19C as though fully set forth herein.

14 SEVENTH CAUSE OF ACTION

15 23. Respondent is subject to disciplinary action under
16 the authority of sections 2234 and 2239(a) of the Code in that he
17 engaged in unprofessional conduct by the unlawful use or
18 prescribing of controlled substances in such manner as to be
19 dangerous or injurious to himself or another. The facts and
20 circumstances are as follows:

21 A. Complainant incorporates by reference subparagraphs
22 19A, 19B and 19C as though fully set forth herein.

23 B. None of the above prescriptions was issued in the
24 usual course of respondent's professional practice.

25 EIGHTH CAUSE OF ACTION

26 24. Respondent is subject to disciplinary action under
27 the authority of sections 2234 and 2242(a) of the Code in that he

1 engaged in unprofessional conduct by prescribing, dispensing or
2 furnishing a dangerous drug without a good faith prior
3 examination and medical indication therefor. The facts and
4 circumstances are as follows:

5 A. Complainant incorporates by reference subparagraphs
6 19A, 19B and 19C as though fully set forth herein.

7 NINTH CAUSE OF ACTION

8 25. Respondent is subject to disciplinary action under
9 the authority of sections 2234 and 2238 of the Code in that he
10 engaged in unprofessional conduct by violating sections 11152 and
11 11173(b) of the Health & Safety Code regulating dangerous drugs
12 or controlled substances by making a false statement in any
13 prescription. The facts and circumstances are as follows:

14 A. Complainant incorporates by reference subparagraphs
15 19A, 19B and 19C as though fully set forth herein.

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18 PRAYER

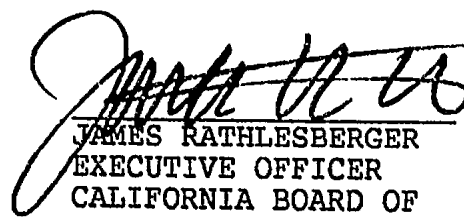
19 WHEREFORE, complainant prays that a hearing be held on
20 the matters alleged hereinabove and, following said hearing, the
21 Board issue a decision:

- 22 1. Revoking or suspending Certificate No. E358,
23 heretofore issued to respondent;
24 2. Ordering respondent to pay the board the actual and
25 reasonable costs of the investigation and prosecution
26 of this case; and
27 3. Taking such other and further action as the board

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may deem proper.

DATED: September 3, 1992


JAMES RATHLESBERGER
EXECUTIVE OFFICER
CALIFORNIA BOARD OF
PODIATRIC MEDICINE

Complainant

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 Jaime R. Román, Deputy Attorney General
California Department of Justice
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4 Telephone: (213) 897-2581

5 Attorneys for Complainant
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BOARD OF PODIATRIC MEDICINE
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
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11 In the Matter of the Accusation)
Against:)

OAH No.

12 DAVID PATRICK DEVLIN, D.P.M.)
13 711 N. Alvarado, Suite 107)
14 Los Angeles, California 90026)

CASE No. D-4921

AMENDED &
SUPPLEMENTAL
ACCUSATION

15 Podiatric Physician)
Certificate No. E-358,)

16 Respondent.)
17

18 The Complainant alleges that:

19 PARTIES

20 26. Complainant is James Rathlesberger, Executive
21 Officer of the Board of Podiatric Medicine of the State of
22 California (hereinafter referred to as "the Board"), and brings
23 this Amended and Supplemental Accusation solely in his official
24 capacity.

25 27. On or about July 11, 1989, the Board issued
26 License No. E-358 to David Patrick Devlin, D.P.M. (hereinafter
27 referred to as "the Respondent") and at all times herein
mentioned, said license has been in full force and effect. On or

1 about September 3, 1992, an Accusation was filed in Case No. D-
2 4921 (this Accusation is incorporated by reference as though
3 fully set herein). No hearing on said Accusation has taken
4 place.

5 JURISDICTION

6 28. This Amended & Supplemental Accusation is brought
7 under the authority of the following sections of the California
8 Business & Professions Code (hereinafter referred to as "the
9 Code"):

10 29. Sections 2222 and 2497(a) of the Code provide the
11 Board may take action against all persons guilty of violating the
12 Medical Practice Act.

13 30. Section 2227 of the Code provides that the Board
14 may revoke, suspend for a period not to exceed one year, or place
15 on probation, the license of any licensee who has been found
16 guilty under the Medical Practice Act.

17 31. Section 2230 of the Code provides that all
18 proceedings against a licensee for unprofessional conduct or
19 cause shall be conducted in accordance with the Administrative
20 Procedure Act (Chapter 5 (commencing with Section 11500) of Part
21 1 of Division 3 of Title 2 of the Government Code).

22 32. Section 11507 of the Government Code (the
23 Administrative Procedure Act) provides that at any time before
24 the matter is submitted for decision the agency may file or
25 permit the filing of an amended or supplemental accusation.

26 33. Sections 490 and 2236(a) of the Code provide that
27 the Board shall take action against any licensee for conviction

1 of a crime substantially related to the qualifications,
2 functions, or duties of that license.

3 34. Section 2237(a) provides that the conviction of a
4 charge of violating any federal or state statute or regulation
5 regulating dangerous drugs or controlled substances constitutes
6 unprofessional conduct.

7 TENTH CAUSE OF ACTION

8 35. Respondent is further subject to disciplinary
9 action pursuant to Sections 490, 2236(a) and 2237(a) of the Code
10 in that he engaged in unprofessional conduct by suffering a
11 criminal conviction for conduct violating a state statute
12 regulating dangerous drugs or controlled substances. The facts
13 and circumstances are as follows:

14 A. Complainant incorporates by reference paragraph 19
15 as though fully set forth herein.

16 B. On or about April 29, 1992, in Case No. BA050821,
17 People v. David P. Devlin, Los Angeles Superior Court,
18 respondent was convicted, following a plea of nolo
19 contendere on April 1, 1992, in Los Angeles Municipal
20 Court, of two counts of violating Business and
21 Professions Code section 4390, a felony, to wit,
22 uttering a forged prescription. Respondent was
23 sentenced to three years probation on condition, inter
24 alia, of 2 days in jail, restitution fine of \$2,000,
25 and undertake a plan of drug abuse.

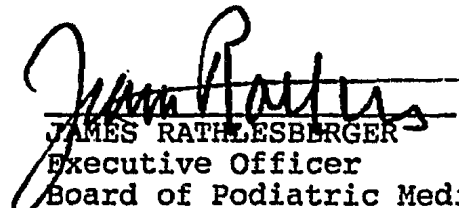
26 PRAYER

27 WHEREFORE, Complainant prays a hearing be held on the

1 matters alleged herein, and, following said hearing, the Board
2 issue a decision:

- 3 1. Revoking or suspending Podiatric Physician Certifi-
4 cate No. E-358, heretofore issued to David P. Devlin,
5 D.P.M.;
- 6 2. Ordering Respondent to pay the Board the actual and
7 reasonable costs of the investigation and prosecution
8 of this matter; and
- 9 3. Taking such other and further action as the
10 Board may deem proper.

11
12 DATED: October 29, 1992.


JAMES RATHLESBERGER
Executive Officer
Board of Podiatric Medicine
State of California

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15 Complainant
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